

Message Text

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ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 L-03 FEAE-00
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FM AMEMBASSY BOGOTA
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EO 11652: NA
TAGS: EAGN ENRG CO US
SUBJECT: JET FUEL PRICES AND TAXES

REF: STATE 185921

1. LOCAL BRANIFF REPRESENTATIVE HAS PROVIDED US
COPIES OF LETTERS HE RECEIVED FROM DIRECTOR GENERAL
OF NATIONAL TAXATION AND ESSO. ACCORDING TO THE
INFORMATION IN THESE LETTERS, BRANIFF HAS NOT BEEN
PAYING TAXES ON ITS FUEL PURCHASES SINCE LATE 1973.

2. INFORMAL TRANSLATION OF PERTINENT PARTS OF LETTER
FROM DIRECTOR GENERAL OF NATIONAL TAXATION IS AS FOLLOWS:

QUOTE: FROM INFORMATION RECEIVED, IT IS CLEAR THAT
BRANIFF AIRWAYS HAS BEEN PAYING THE INTERNATIONAL
PRICE FOR FUEL, CURRENTLY 55 CENTS A GALLON, WHICH,
AS NOTED BY ECOPETROL IN THEIR COMMUNICATION OF JULY 7,
DOES NOT INCLUDE THE SALES TAX, INASMUCH AS FUEL
SALES FOR INTERNATIONAL TRIPS ARE CONSIDERED AS
TAX EXEMPT EXPORT PRODUCTS (NO. 4, ARTICLE 8, DECREE 1988/74)

QUOTE: NEVERTHELESS, DUE TO AN ERROR ON THE PART
OF YOUR SUPPLIER, ESSO COLOMBIANA S.A., THE BILLS
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PRESENTED TO BRANIFF AIRWAYS HAVE INCLUDED THE STATEMENT
QUOTE THE PRICE OF FUEL INCLUDES A SALES TAX OF
28 CENTAVOS PER GALLON COLLECTED BY ECOPETROL. END QUOTE.

QUOTE: WHILE THE TAX IS INDEED PAID BY THE DISTRIBUTOR
ON RECEIVING FUEL FROM THE REFINERY, THE DISTRIBUTOR
SUBSEQUENTLY IS REIMBURSED BY ECOPETROL, AS CONFIRMED BY ESSO
COLOMBIANA IN A LETTER DIRECTED TO THIS OFFICE.

QUOTE: WE HAVE WRITTEN TO ESSO REQUESTING THEM TO MODIFY THEIR PRACTICE OF STATING ON THEIR BILLS TO THE INTERNATIONAL AIR CARRIERS THAT THE PRICE INCLUDES THE SALES TAX.

QUOTE: FOR THE REASONS SET FORTH ABOVE, THIS OFFICE CONSIDERS THAT IT IS NOT NECESSARY TO ISSUE A DECREE (EXEMPTING BRANIFF FROM THE FUEL TAX) WHICH IN THE FINAL ANALYSIS WOULD ESTABLISH A MECHANISM EQUAL OR SIMILAR TO THAT DESCRIBED BY ECOPETROL AND WHICH, AMONG OTHER THINGS, IS THE SAME AS SET FORTH IN DECREE 881 OF 1976. END QUOTE.

3. ON RECEIPT OF LETTER FROM DIRECTOR GENERAL OF NATIONAL TAXATION, LOCAL BRANIFF REPRESENTATIVE WROTE TO ESSO REQUESTING THEIR COMMENTS. EXCERPTS FROM ESSO'S REPLY ARE AS FOLLOWS:

QUOTE: WITH REFERENCE TO YOUR LETTER OF JULY 22, WE ARE FORCED TO ADMIT THAT, UNFORTUNATELY, OUR COMPANY HAS BEEN ERRONEOUSLY CERTIFYING ON THE FUEL BILLS THAT THE SALES PRICE INCLUDES THE SALES TAX. WITHOUT TRYING TO JUSTIFY OUR MISTAKE, WE WISH TO EXPLAIN THE ORIGIN OF THE PROBLEM.

QUOTE: UNTIL NOVEMBER 27, 1973, SALES TO AIRLINES FOR INTERNATIONAL FLIGHTS WERE TREATED THE SAME AS SALES FOR DOMESTIC FLIGHTS, THE ONLY DIFFERENCE BEING THAT SOME INTERNATIONAL AIRLINES PAID IN DOLLARS, WHICH WERE THEN TURNED IN TO THE BANK OF THE REPUBLIC IN ACCORDANCE WITH EXISTING REGULATIONS. THESE SALES OF COURSE, WERE SUBJECT TO THE SALES TAX.

QUOTE: ARTICLE ONE OF THE FOREIGN TRADE DIRECTIVE COUNCIL'S LIMITED OFFICIAL USE

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RESOLUTION NUMBER 57 OF NOVEMBER 1973 ESTABLISHED THE FOLLOWING CRITERIA: SALES OF FUEL TO AIRCRAFT FOR INTERNATIONAL FLIGHTS, TO FOREIGN FLAG SHIPS AND TO COLOMBIAN FLAG SHIPS DESTINED FOR FOREIGN PORTS WILL BE CONSIDERED AS EXPORTS.

QUOTE: DECREES 2414 AND 2418 OF NOVEMBER 22 AND 23, 1973, AS WELL AS RESOLUTIONS 442 AND 443, ISSUED BY THE SUPERINTENDENCY OF PRICES, SET FORTH THE REGULATIONS CONTROLLING THE SUPPLY OF FUEL FOR INTERNATIONAL VOYAGES. IN VIEW OF THESE REGULATIONS, THE PRICES WE BILL FOR FUEL DELIVERED TO BRANIFF ARE THOSE ESTABLISHED BY ECOPETROL AND WHICH, ACCORDING TO THAT COMPANY, DO NOT INCLUDE THE SALES TAX. CONSEQUENTLY, THE TAX HAS NEITHER BEEN LEVIED ON NOR PAID BY YOUR COMPANY. END QUOTE.

4. IT IS OUR UNDERSTANDING THAT BRANIFF ACCEPTS THE EXPLANATIONS OF THE TAX QUESTION, LEAVING TO BE RESOLVED ESSENTIALLY THE MATTER OF THE FUEL PRICE DIFFERENTIAL. WHILE A NUMBER OF PROPOSALS HAVE BEEN PUT FORTH BY BOTH SIDES, WE ARE NOT IN A POSITION TO EVALUATE THEIR FEASIBILITY. HOWEVER, ACCORDING TO A JULY 28 MEMO FROM BRANIFF FUEL SPECIALIST ENNIS TO BRANIFF VICE PRESIDENT DE MURIAS, THE COMPANY IS PURSUING THE POSSIBILITY OF BROKERING

AUTOMOBILE FUEL, AND ENNIS BELIEVES THAT SUCCESS IN
LOCATING A NEW SOURCE OF SUPPLY COULD BE OF VALUE AS
LEVERAGE IN REDUCING JET FUEL PRICES.

5. IN LIGHT OF THE FOREGOING, PARTICULARLY AS REGARDS
THE NON-EXISTENCE OF THE TAX PROBLEM, WE WOULD APPRECIATE
THE DEPARTMENT'S GUIDANCE ON HOW WE SHOULD REPLY TO THE
FOREIGN MINISTRY'S NOTE (BOGOTA 6275).
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